

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

GRANT AGREEMENT

DTFRDV-09-G-00003

NATIONAL RAILROAD PASSENGER  
CORPORATION

[Hereinafter, the Grantee]



(Signature of Authorized Official)

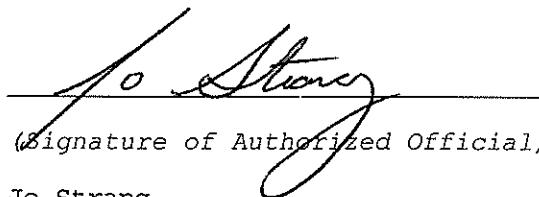
William Crosbie  
Chief Operating Officer  
(Name and Title)

3/19/09

(Date)

FEDERAL RAILROAD ADMINISTRATION

[Hereinafter, FRA]



(Signature of Authorized Official)

Jo Strang  
Acting Deputy Administrator  
(Name and Title)

(Date) 3/19/09

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# ARTICLE I - SPECIAL PROVISIONS

## Section 101. Background.

a. The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 115 (2/17/2009) "Recovery Act") was enacted by Congress to: (1) preserve and create jobs and promote economic recovery, (2) assist those most impacted by the recession, (3) provide investments needed to increase economic efficiency by spurring technological advances in science and health, (4) invest in transportation, environmental protection and other infrastructure that will provide long-term economic benefits, and (5) stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

b. The Recovery Act includes an appropriation of \$1,300,000,000 to enable the Secretary of Transportation to make additional capital grants to the Grantee as authorized by section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. No. 110-432) (PRIIA), of which \$450,000,000 shall be used for capital security grants, including life safety improvements. Priority for the use of the non-security funds is to be given to projects for the repair, rehabilitation, or upgrade of railroad assets or infrastructure, and for capital projects that expand passenger rail capacity, including the rehabilitation of rolling stock. Recovery Act funds cannot be used to subsidize the operating losses of the Grantee.

c. Section 101(d) of PRIIA authorizes the Secretary of Transportation to withhold up to  $\frac{1}{2}$  of 1 percent for the costs of program management oversight of capital projects carried out by the Grantee. As a result, the FRA Administrator will retain \$6,475,000 for that purpose.

d. Consistent with Office of Management and Budget Guidance, funds are to be awarded and distributed in a prompt, fair and reasonable manner; recipients and uses of all funds are to be transparent to the public and the public benefits of these funds are to be reported clearly, accurately and in a timely manner; funds are to be used for authorized purposes and instances of fraud, waste, error, and abuse are to be mitigated; projects funded under the Recovery Act are to avoid unnecessary delays and cost overruns; and program goals are to be achieved, including specific program outcomes and improved results on broader economic indicators.

e. The Recovery Act imposes a number of conditions on the Grantee's receipt and expenditure of funds and these requirements are reflected in the later sections of this Agreement, where appropriate.

## Section 102. Identification of Awarding Agency and Grantee.

The Grantee and the Administrator of the FRA, acting by delegation from the Secretary of Transportation, have entered into this grant agreement ("Agreement") to fund a series of individual capital projects focusing on the repair, rehabilitation or upgrade of railroad assets and infrastructure, on the expansion of passenger rail capacity, and on security improvements all in a manner that contributes to more efficient and effective intercity rail passenger services, as more specifically set forth in Section 104, hereafter.

## Section 103. Authority.

This Agreement is awarded utilizing funds appropriated to the Secretary of Transportation in the Recovery Act.

Section 104. Scope.

a. The Grantee shall furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to implement a series of individual capital projects with priority for those projects that repair, rehabilitate or upgrade railroad assets and infrastructure or expand passenger rail capacity, including the rehabilitation of rolling stock and those capital projects that support improved passenger rail security and life safety ("Recovery Act Capital Program").

b. Eligible projects are those identified in 49 U.S.C. §24401(2)(A) and (B) and include: (A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights of way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing; and (B) rehabilitating, remanufacturing, or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service. The portion of the funds allocated to capital security projects involves projects that will improve the security of the Grantee's operations and address critical life safety needs.

c. In appropriating Recovery Act funds, Congress has indicated that the Secretary of Transportation must certify that the Secretary has taken measures to ensure that projects funded under the Recovery Act are completed no later than February 17, 2011 and serve to supplant planned expenditures from other Federal, State, local and corporate sources. The Grantee shall not expend more than sixty percent of the non-security funds for capital projects along the Northeast Corridor (the main line between Washington, DC and Boston, Massachusetts). The Grantee shall carry out the Recovery Act Capital Program in accordance with the Approved Program Budget attached hereto as Attachment IV-a, the Approved Project Scopes attached hereto as Attachment IV-b, its application dated March 19, 2009, which is incorporated herein by reference and made a part hereof, and the provisions of this Agreement. The Approved Program Budget and the Approved Project Scopes reflected in the referenced attachments to this Agreement include those projects which the FRA has approved for inclusion in the Recovery Act Capital Program as of the effective date of this Agreement. Additional projects will be added to the Recovery Act Capital Program through revisions to the Approved Program Budget and the Approved Project Scopes in accordance with section 204 as they are approved by the FRA (1) for projects that were proposed by the Grantee as of the effective date of this Agreement, but not approved by FRA as of that date; and (2) for other projects.

d. The Grantee has indicated that the details associated with some of the projects to be undertaken with funds appropriated for security projects constitute sensitive security information (SSI) the public release of which could be detrimental to transportation security. Accordingly, the Grantee has submitted separate Approved Project Scopes addressing security projects which it has marked "Sensitive Security Information" according to established procedures and which security project scopes are incorporated herein by reference and made a part of this Agreement but which will not be made publicly available. FRA will handle the SSI marked Approved Project Scopes in accordance with applicable security regulations.

e. The expenditures funded under this Agreement are properly characterized as capital expenditures under Generally Accepted Accounting Principles (GAAP) with

the exception of rehabilitation of wrecked or damaged equipment. Authority to use Recovery Act funds for rehabilitation of wrecked or damaged equipment is found in section 101(c) of PRIIA (referencing 49 U.S.C. §24401(2)) and in the Recovery Act. The Recovery Act specifically provides that funding provided through the Act shall not be used to subsidize operating losses of the Grantee.

f. The Grantee shall make available to the Grantee's Office of Inspector General \$5,000,000 to be available through September 30, 2013, to be used to perform oversight of the Grantee's compliance with the Recovery Act and this Agreement. The Grantee shall forward to the Administrator within thirty days of the effective date of this Agreement a scope of work, budget, and proposed deliverables in connection with the Inspector General's proposed use of the \$5,000,000 in overseeing the Grantee's expenditure of Recovery Act funding.

#### Section 105. Awarding Agency Participation.

The FRA will provide, on an "as available" basis, one professional staff person, to be designated as the Technical Representative, to review work or work products in progress.

#### Section 106. Term.

Unless sooner terminated in accordance with its terms, or unless otherwise specified herein, this Agreement shall be valid through November 30, 2011. This time frame includes the period for both completion of the Grantee's Recovery Act Capital Program, and completion and submission of a final report on that program as described in Section 114 and/or other deliverables as agreed to between the parties. Certain reporting requirements included in section 111 may continue beyond November 30, 2011 and survive termination.

#### Section 107. Cost and Cost Share Responsibility.

a. The Grantee's Recovery Act Capital Program is supported entirely by the funds provided through this Agreement and involves a Federal government investment of \$1,293,525,000 of which \$446,027,885 shall be used for capital security grants (including life safety improvements), and of which \$5,000,000 shall be made available to the Grantee's Office of Inspector General both as reflected in the Approved Program Budget. FRA has retained \$6,475,000 to be used to fund the cost of project management oversight of capital projects as authorized by section 101(d) of PRIIA.

b. FRA will provide funding assistance under this Agreement for the Grantee's Recovery Act non-security Capital Program in an amount not to exceed \$842,497,115 and for the Grantee's security capital program in an amount not to exceed \$446,027,885 under any circumstances.

c. The Recovery Act does not require the Grantee to provide matching funds and matching funds are not required in this Agreement.

d. When requesting payment, the Grantee must identify: (1) the total amount of costs; and (2) the federal assistance dollars requested for payment.

Accounting Data \$842,497,115: 2709100724.2009.92010029Y0.9013000000

Accounting Data \$446,027,885: 2709100724.2009.92010129Y0.9013000000

Accounting Data \$5,000,000: 2709130724.2009.94010029Y0.9013000000

e. Consistent with section 207c.(5) and d.(1) herein, FRA has authorized the Grantee to use funds made available under this Agreement to cover cash disbursements made on or after February 17, 2009.



# Section 108. Program Income.

a. The Grantee is encouraged to earn income to defray the costs associated with conducting its intercity passenger rail operations. Unless prohibited by 49 C.F.R. Part 19.24, or otherwise agreed to in writing by FRA and the Grantee, any program income derived from the operation of intercity rail passenger services shall be committed under this Agreement to support the operation of such services.

b. Program income shall be proportionally deducted from Project outlays, which may be both Federal and non-Federal, unless one of the following alternatives (as defined in 49 C.F.R. Part 19.24) is specified.

Alternative use of program income for this Agreement is (check one):

- (X) Addition  
( ) Cost Share or Matching

If not checked, deduction method described above applies.

# Section 109. Payment Method.

Payment of FRA funding through FRA's Office of Financial Services shall be made in accordance with the provisions in Attachment II, "Recipient Organization Procedures for Requesting Advance Payment"; and the following (as checked):

- (X) FRA has determined that notwithstanding the provisions of 49 C.F.R. Part 19, the Grantee is eligible to be paid in advance on a quarterly basis as authorized in the FY 2009 Continuing Resolution and the FY 2008 DOT Appropriations Act. Quarterly advances are consistent with FRA's normal practice in funding the Grantee's capital (and operating) program and the Recovery Act provides "For an additional amount for the National Railroad Passenger Corporation (Amtrak) to enable the Secretary of Transportation to make capital grants to Amtrak" which FRA has determined reflects a Congressional intent to follow a quarterly funding process for the Recovery Act funding as well. Employing a quarterly funding process will also allow for expeditious expenditure of Recovery Act funding, which is consistent with the purposes of the Act, and allow for a consistent treatment between regular capital (and operating) funding and Recovery Act funding. Each quarterly funding request must be consistent with the Approved Program Budget (Attachment IV-a) and the Approved Project Scopes (Attachment IV-b). Prior to the start of each quarter, the Grantee shall provide to the FRA Administrator a quarterly funding request detailing the amount and use of Federal funds it reasonably expects to expend in the upcoming quarter for conducting its Recovery Act Capital Program. The Grantee's request shall take into consideration any funds which were received in the then-current or prior quarter(s) and not expended and the new request shall be appropriately adjusted to reflect the revised estimate, if any, of anticipated Recovery Act Capital Program expenditures through the upcoming quarter. Following FRA approval of the Grantee's funding request for the quarter, FRA will make the funding available to the Grantee as described below.

The Grantee hereby selects the following method for transfer of advance funds (select one):

- (X) Automated Clearing House (ACH) Vendor Payment.  
Grantee submits SF 1194, SF 3881, and SF 5805 (formerly TFS 5805) in accordance with Attachment 2, if attached.
- ( ) Treasury Check.

Grantee submits SF 1194, SF 5808 (formerly TFS 5805) and SF 3881 (excluding financial institution information) in accordance with Article II.

- ( ) Either the Grantee has elected to be paid by method of reimbursement, or FRA has determined that in accordance with 49 C.F.R. Part 19 the Grantee is not eligible to be paid in advance, and is therefore to be reimbursed, after the submission of proper invoices, for actual expenses incurred.

The Grantee hereby selects the following method for transfer of reimbursed funds (select one):

- ( ) Automated Clearing House (ACH) Vendor Payment.  
Grantee submits SF 5805, SF 3881, and SF 270 in accordance with Article II.
- ( ) Treasury Check.  
Grantee submits SF 1194, SF 270 and SF 3881 (excluding financial institution information) in accordance with Article II.

#### Section 110. Reports, Presentations and Other Deliverables.

Whether for technical examination, administrative review, or publication, all submittals shall be of a professional quality and suitable for their intended purpose. Due dates for submittals shall be based on the specified intervals or days from the effective date of this Agreement.

#### Section 111. Reporting.

a. Periodic Reports. The Grantee shall submit periodic reports to the Administrator as described in this section not later than May 19, 2009, August 17, 2009, February 17, 2010, February 17, 2011, and February 17, 2012. The Periodic Reports shall include information describing: (1) the amount of Federal funds appropriated, allocated, obligated, and outlayed under this Agreement; (2) the number of projects that have been put out to bid under this Agreement and the amount of Federal funds associated with such projects; (3) the number of projects for which contracts have been awarded under this Agreement and the amount of Federal funds associated with such contracts; (4) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts; (5) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts; (6) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under this Agreement and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of jobs created and the total increase in employment since February 17, 2009; and (7) information tracking the actual aggregate expenditures by the Grantee from Amtrak sources (both internal and external) for projects eligible for funding under this Agreement during the period beginning on February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of February 17, 2009. The Department of Transportation or the FRA may issue additional guidance on the preparation and submission of Periodic Reports.

b. Jobs Accountability Reports: Not later than ten days after the end of each quarter, the Grantee shall submit a Jobs Accountability Report to the Administrator that contains: (1) the total amount of Recovery Act funds received pursuant to this Agreement; (2) the amount of Recovery Act funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including—(A) the name of the project or activity; (B) a description of

the project or activity; (C) an evaluation of the completion status of the project or activity; (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and (E) detailed information on any subcontracts or subgrants awarded by the Grantee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget. The Office of Management and Budget may issue additional guidance on the preparation and submission of Jobs Accountability Reports. The Grantee must also register with the Central Contractor Registration database or complete other registration requirements as determined by the Director of the Office of Management and Budget.

c. Capital Expenditures Report: The Grantee shall furnish one (1) electronic copy and, if requested by FRA, one (1) hard copy of the progress reports described below to the Technical Representative (as hereinafter defined) as follows:

1. a Monthly Progress Report due on or before the last day of the month following the end of the month being reported showing progress against budget and schedule, including any matters which might cause a deviation of 10 percent or more in either budget or schedule, a description of any technical and/or cost problem(s) encountered or anticipated that will affect the implementation of the Recovery Act Capital Program as set forth in this Agreement together with recommended solutions or corrective action plans (with dates) to such problems, or a statement that no problems were encountered. The monthly progress report shall also report on the progress of projects and activities funded under this Agreement with respect to compliance with National Environmental Policy Act (NEPA) requirements and documentation; which information will assist the FRA in meeting the reporting requirements of section 1609(c) of the Recovery Act. The Office of Management and Budget and/or the Council on Environmental Quality may issue additional guidance on preparation and submission of NEPA compliance reports.

2. a Recovery Act Capital Program Monthly Status Report on or before the last day of the month following the end of the month being reported in the format included in Attachment V-a, Program-Level Expenditure Report Template.

3. a detailed Recovery Act Capital Project Cost Report on or before the last day of the month following the end of the month being reported in the format included in Attachment V-b, Project-Level Expenditure Report Template.

4. a detailed Recovery Act Capital Program Status Report on or before the fiftieth (50th) day after the month end as a part of the Grantee's Monthly Performance Report in the format included in Attachment V-c, Monthly Detailed Project Status Report.

d. Information provided by the Grantee through the reporting requirements of this section may be used by the FRA to populate Recovery.gov or FRA's own website to satisfy reporting requirements included in the Recovery Act and/or Office of Management and Budget Recovery Act implementing guidance. The Grantee will provide such assistance as FRA may require assuring that Recovery Act posting requirements to FRA's website and Recovery.gov are accomplished in accordance with the Recovery Act and implementing guidance.

**Section 112. Monthly Financial Status Report.**

The Grantee shall furnish one (1) electronic copy and, if requested by FRA, one (1) hard copy of a monthly financial status report to the FRA Grants Officer on or before the last calendar day of the month following the end of the month being reported. The Grantee shall use SF 269 or 269A, Financial Status Report, to report the status of funds for all non-construction projects or programs. The Grantee shall report outlays and program income, if any, on an accrual basis. However, if the Grantee's accounting records are not normally kept on an accrual basis, the Grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand. The Grantee shall certify to the expenditure of its proposed cost share for the period being reported, in the "Remarks" block.

**Section 113. Monthly Federal Cash Transactions Report.**

The Grantee shall submit a SF 272, Federal Cash Transaction Report (and when necessary the continuation sheet SF 272a), for grants paid by Treasury Check Advances, or Electronic Transfer of Funds. FRA will use this report to monitor cash advanced to the Grantee and to obtain disbursement or outlay information. Forecasts of federal cash outlays are required in the "Remarks" section of the report. The Grantee shall furnish one (1) electronic copy and one (1) hard copy, if requested, of the monthly federal cash transaction report to the Technical Representative on or before the last calendar day of the month following the end of the month being reported.

**Section 114. Final Report.**

Upon completion of the Grantee's responsibilities and activities under this Agreement (see Section 106), the Grantee shall furnish one (1) electronic copy and if requested by FRA one (1) hard copy to the FRA Grants Officer of a summary report. This summary report, which shall detail the results and benefits of the Grantee's Recovery Act Capital Program and significant accomplishments, improvements, and challenges, shall be furnished within ninety (90) days of the expiration date of this Agreement.

**Section 115. Administrative Responsibility.**

a. Mark E. Yachmetz, Associate Administrator for Railroad Development, Office of Railroad Development, is designated as FRA's Grants Officer for this Agreement. All FRA administrative duties under this Agreement are to be performed by the Grants Officer, unless otherwise specified.

b. Sharyn Seitz, Assistant Vice President Financial Planning, National Railroad Passenger Corporation, is designated as the Grantee's principal contact for this Agreement.

**Section 116. Technical Representative.**

a. Dharm Guruswamy, Office of Railroad Development, is designated as FRA's Technical Representative. The Technical Representative will oversee the technical administration of this Agreement and act as technical liaison with the Grantee. The Technical Representative is not authorized to change the scope of work or specifications as stated in this Agreement, to make any commitments or otherwise obligate the FRA, or authorize any changes which affect this Agreement's monetary amount, delivery schedule, period of performance or other terms or conditions.

b. The FRA official authorized to sign this Agreement is the only individual who can legally commit or obligate FRA for the expenditure of public funds. The technical administration of this Agreement shall not be construed to

authorize the revision of the terms and conditions of this Agreement.

**Section 117. Delivery/Mailing Addresses.**

Unless directed otherwise, all deliverables and copies of reports required to be delivered to the Grants Officer under this Agreement shall be delivered F.O.B. destination, under transmittal letter, to:

Federal Railroad Administration  
Office of Railroad Development  
1200 New Jersey Avenue, S.E. (Stop 20)  
Washington, DC 20590  
ATTN: Dharm Guruswamy

Electronic submissions shall be sent to PassengerRail.Liaison @FRA.DOT.GOV

Unless directed otherwise, requests for payment shall be made to:

Administrator  
Federal Railroad Administration  
1200 New Jersey, S.E. (Stop 5)  
Washington, DC 20590

**Section 118. Governing Regulations.**

Except as specifically addressed in sections 104, 205, 207, 208, and 222 of this Agreement, the Grantee acknowledges that its performance shall be governed by and in compliance with the following Administrative and Cost Principles: (check one):

*Typical applicant is an Institution of Higher Education and/or Hospital*

- ( ) 49 C.F.R., Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" and OMB Circular A-21, "Principles for Determining Costs Applicable to Grants, Contracts and Other Agreements with Education Institutions," as amended. These identified circulars are hereby incorporated into this Agreement by reference as if fully set out herein.

*Typical applicant is a Nonprofit Organization*

- ( ) 49 C.F.R., Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" and OMB Circular A-122, "Costs Principles for Nonprofit Organization," as amended. These identified circulars are hereby incorporated into this Agreement by reference as if fully set out herein.

*Typical applicant is a For-Profit Organization*

- (X) 49 C.F.R., Part 19, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" and 48 C.F.R., Chapter I, Subpart 31.2, "Contracts with Commercial Organizations," as amended. These identified circulars and regulations are hereby incorporated into this Agreement by reference as if fully set out herein.

*Typical applicant is a State or Local Government*

- ( ) 49 C.F.R., Part 18, "Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments" and OMB Circular A-87, "Cost Principles for State and Local Governments," as amended. These identified circulars and regulations are hereby incorporated into this Agreement by reference as if fully set out herein.

#### Section 119. Assurances and Certifications.

The Grantee agrees to comply with the U.S. Department of Transportation, Federal Railroad Administration, package of Assurances and Certifications attached hereto as Attachment III.

#### Section 120. Interlocking Configurations.

The Grantee agrees, with respect to any Recovery Act funded interlocking reconstruction or reconfiguration project (including any implementation of the State of Connecticut's Hartford Busway Project), to obtain the prior written concurrence from the owner and each operator authorized to use the proposed configuration before detailed design work is initiated with funding provided through this Agreement; provided however, that the FRA may waive this requirement in instances where an owner or authorized user's consent is unreasonably withheld.

#### Section 121. Grantee Certifications.

a. **Maintenance of Effort Certification.** With respect to and prior to the receipt of the funds made available through this Agreement, the Grantee's Chief Operating Officer shall certify to the FRA Administrator that the Grantee will maintain its effort with regard to Grantee funding for the types of projects that are funded by this Agreement. As a part of this certification, the Grantee shall submit a statement identifying the amount of funds the Grantee planned to expend from other sources as of February 17, 2009 during the period beginning on February 17, 2009 through September 30, 2010 for the types of projects that are funded by this Agreement.

b. **Responsible Investments Certification.** With respect to and prior to the receipt of the funds made available through this Agreement, the Grantee's Chief Operating Officer shall certify to the FRA Administrator that the infrastructure investments to be funded herein have received the full review and vetting required by law and that the Chief Executive Officer accepts responsibility that the infrastructure investments are an appropriate use of taxpayer dollars. The certification shall include a description of the investments, the estimated total cost, and the amount of Recovery Act funds to be used and shall be posted on the Grantee's website and linked to the website established by the Recovery Accountability and Transparency Board.

c. **Appropriate Use of Funds Certification.** With respect to and prior to the receipt of funds made available through this Agreement, the Grantee's Chief Operating Officer shall certify to the FRA Administrator that the Grantee (1) will request and use the funds provided through the Recovery Act; and (2) the funds will be used to create jobs and promote economic growth.

d. **Department of Transportation Guidance.** The Department issued guidance to the states on February 27, 2009 on state compliance with the certification requirements of the Recovery Act. The Grantee should refer to this guidance in preparing the certifications required under this Agreement.

#### Section 122. Quick-Start Activities.

In using funds made available through this Agreement for infrastructure

investment, the Grantee shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than June 17, 2009. The Grantee shall also use the funds provided through this Agreement in a manner that maximizes job creation and economic benefit.

**Section 123. Supplementing Planned Expenditures.**

The Grantee certifies that all of the projects and activities to be carried out with the funding provided through this Agreement supplement and do not supplant planned expenditures on capital projects from other Federal, State, local and corporate sources. In addition to projects funded entirely through this Agreement, Grantee has included in the Recovery Act Capital Program some projects funded in part under Grantee's fiscal year 2009 (FY '09) planned expenditures and/or have non-FRA federal funds (e.g., Federal Transit Administration or Department of Homeland Security )and in part under the Recovery Act. The Recovery Act funding will cover activities that are expanded in scope or accelerated in scheduling and not a part of FY '09 planned expenditures. The Grantee will provide such background information as FRA may require in order to substantiate its certification.

**Section 124. Completion Date.**

a. **Measures to Complete Projects.** The Grantee certifies that (with respect to the development of the Recovery Act Capital Program) it has taken and shall take throughout the term of this Agreement, measures to ensure that all of the projects and activities to be carried out with the funding provided through this Agreement will be completed on or before February 17, 2011, and that the Grantee has carefully selected projects for funding under this Agreement that allow for immediate construction and then completion within the two year time frame established in the Act.

Grantee has taken or will take the following measures to complete projects by February 17, 2011:

**Measures Grantee has taken:**

1. established a committee to develop a selection process for scoring and ranking potential projects based upon, among other things, compatibility with Recovery Act goals and requirements;
2. provided Recovery Act training to Procurement, Engineering and Mechanical staff who will be involved in contracting for projects funded by the Recovery Act and, in that training, emphasized that February 17, 2011 is the date by which each such project is to be completed, with additional training planned as guidelines for Recovery Act implementation are developed;

**Measures Grantee will take:**

3. require solicitation packages and contract documents for each Amtrak Recovery Act project to provide that the project is to be completed on or before February 17, 2011. Vendors/contractors will be asked specifically about their ability to meet that completion date, and, if no otherwise qualifying vendor/contractor can commit to meeting that completion date on reasonable terms, Grantee will take necessary corrective action measures;
4. monitor forecasts monthly and make all reports to FRA in accordance with

all sections of the Agreement, paying close attention to the ability/capacity of vendors/contractors to complete the projects on or before February 17, 2011;

5. in accordance with this Section, notify the Administrator at the earliest possible time should the Grantee determine that, absent corrective action, a project funded under this Agreement cannot be completed by February 17, 2011. Any such notification by Grantee shall identify the cause for the delay and recommend corrective action measures;
6. with the written approval of FRA's Associate Administrator for Railroad Development and in accordance with Section 204.b., make necessary revisions to the Approved Project Scopes when it becomes clear a project is unable to be completed by February 17, 2011, despite efforts to recover schedule; and
7. establish a set of substitute eligible projects that may be undertaken and completed on or before February 17, 2011 in the event that a revision to the Approved Project Scopes pursuant to the preceding provision becomes necessary.

b. **Notification.** The Grantee will notify the Administrator at the earliest possible time should it determine that, absent corrective action, a project proposed for funding or receiving funding under this Agreement cannot be completed by February 17, 2011. The notification shall identify the cause for the delay and recommend corrective action measures.

c. **Waiver.** Should the Grantee determine that, despite its best efforts, a project that it has initiated, is under construction, and has been and is being diligently pursued, cannot be completed by February 17, 2011, it can file a request with the Associate Administrator for Railroad Development seeking a waiver of the February 17, 2011 completion date requirement. The waiver request should identify the extraordinary measures the Grantee has undertaken to meet the February 17, 2011 completion date, explain the reason the completion date cannot be achieved, and identify, support and commit to a revised completion date for the project.

#### Section 125. Secretary of Transportation Certification.

The Secretary of Transportation will make the required statutory written certification to the House and Senate Committees on Appropriations that the Secretary has taken measures to ensure that projects funded under the Recovery Act shall be completed within 2 years of enactment of the Recovery Act and shall serve to supplement and not supplant planned expenditures for such activities from other Federal, State, local and corporate sources in part on the basis of the certifications provided in sections 123 and 124.

#### Section 126. Board of Directors' Approval.

At the March 19, 2009 meeting of its Board of Directors, the Grantee shall secure approval of the Board for the Recovery Act Capital Program that is being funded through this Agreement. Should any revisions be necessary to the Recovery Act Capital Program as a result of the Board approval process, they should be accomplished through the Approved Program Budget/Approved Project Scopes revision process described in section 204.

#### Section 127. Whistleblower Protections.

An employee of Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary



course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of - (1) gross mismanagement of an agency contract or grant relating to Recovery Act funds; (2) a gross waste of Recovery Act funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Recovery Act funds; (4) an abuse of authority related to the implementation or use of Recovery Act funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Recovery Act funds.

**Section 128. False Claims Act.**

The Grantee and any sub-grantee awarded funds made available under the Recovery Act and through this Agreement shall promptly refer to an appropriate inspector general (either the Amtrak Inspector General or the Department of Transportation Inspector General) any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

**Section 129. Prohibited Activities.**

None of the funds provided through this Agreement may be used for any casino or other gaming establishment, aquarium, zoo, golf course or swimming pool.

**Section 130. Recovery Act Funding Announcement.**

The Grantee shall post a sign at all fixed project locations at the most publicly accessible location and a plaque in all purchased or rehabilitated rail cars announcing that the project or equipment was funded by the U.S. Department of Transportation, Federal Railroad Administration with funds provided through the American Recovery and Reinvestment Act. The configuration of the signs or plaques will be consistent with guidance issued by the Office of Management and Budget and/or the Department of Transportation and approved by the FRA.

**ARTICLE II - GENERAL PROVISIONS**

**Section 201. Definitions. As used in this Agreement:**

a. **Agreement** means this Grant Agreement.

b. **Application** means the Grantee's March 19, 2009 Application (Standard Form 424 and attachments) and any subsequent or follow-up application for Recovery Act funds, which includes, among other things, a detailed description of the capital projects proposed to be funded with funds appropriated in the Recovery Act, the goals and objectives for the Recovery Act Capital Program and the Grantee's project selection criteria and methodology.

c. **Approved Program Budget** means the most recently dated written statement, (as approved by FRA and attached hereto as Attachment IV-a) of the total cost of the Grantee's Recovery Act Capital Program, the items to be deducted from such total in order to calculate the estimated net Federal share, the maximum amount of Federal assistance for which the Grantee is currently

eligible, the specific items and Recovery Act Capital Program categories for which the total may be spent, and the estimated cost of each such item.

d. **Approved Project Scopes** means the most recently dated written statement, attached in summary hereto as Attachment IV-b describing in detail the work to be carried out and the accomplishments to be achieved by the Grantee for each individual capital project included in the Recovery Act Capital Program.

e. **Awarding Agency** means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant. In the case of a Federal Agency, the term "Awarding Agency" also includes "Federal Awarding Agency" as used in 49 C.F.R., Part 19.

f. **Capital Expenditures** means amounts incurred by the Grantee as a part of the Recovery Act Capital Program to acquire or improve long-lived assets such as property, plant, or equipment in connection with approved capital projects, including incidental operating expenses specifically associated with such projects. As required by GAAP, capital expenditures include cash disbursements, accrued expenditures, and the application of inventory to authorized capital activities. Capital expenditures do not include subsidies towards the operating losses of the Grantee.

g. **Federal Railroad Administration** is an operating administration of the U.S. Department of Transportation.

h. **Federal Government** means the United States of America and any executive department or agency thereof.

i. **Grantee** means National Railroad Passenger Corporation.

j. **Small purchase threshold**, for the purposes of this Agreement, is synonymous with "simplified acquisition threshold" and shall be set at the greater of \$100,000 or the amount set at 41 U.S.C. 403(11).

k. **Subgrantee** means any entity that receives FRA assistance from an FRA Grantee, rather than from FRA directly. The term "subgrantee" does not include "third party contractor" or any state or local governmental entity, including any regional transportation or transit agency.

l. **U.S. DOT** means the U.S. Department of Transportation, including its operating administrations.

## Section 202. Recovery Act Capital Program.

a. **General Requirements.** The Grantee agrees to carry out the Recovery Act Capital Program in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement, the Approved Program Budget, the Approved Project Scopes, its Application, and all applicable laws, regulations, and published policies. This includes, but is not limited to the following:

U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," 49 C.F.R. Part 19, applies to Projects with institutions of higher education and private nonprofit organizations. 49 C.F.R. Part 19 also applies to grants and cooperative agreements with private for-profit organizations and shall apply to Grantee except as specifically addressed in sections 205, 207, 208, and 222 of this Agreement.

b. **Application of Federal, State, and Local Laws and Regulations.**

(1) Federal Laws and Regulations. The Grantee understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Grantee agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. All limits or standards set forth in this Agreement to be observed in the performance of the Grantee's obligations under this Agreement are minimum requirements.

(2) State or Territorial Law and Local Law. Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in this Agreement shall require the Grantee to observe or enforce compliance with any provision hereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of this Agreement violate any applicable State or territorial law, or if compliance with the provisions of this Agreement would require the Grantee to violate any applicable State or territorial law, the Grantee agrees to notify the FRA immediately in writing in order that FRA and the Grantee may make appropriate arrangements to proceed as soon as possible. Nothing in this Agreement is intended to result in the loss or reduction by Grantee of any rights to preemption of state or local law or regulation to which Grantee is otherwise entitled.

c. Changed Conditions of Performance (Including Litigation). The Grantee agrees to notify FRA immediately of any change in local law, conditions, or any other event that it becomes aware of that may affect, in a materially adverse manner, its ability to carry out the Recovery Act Capital Program in accordance with the terms of this Agreement. In addition, the Grantee agrees to notify FRA immediately of any decision pertaining to the Grantee's conduct of litigation that may affect, in a materially adverse manner, FRA's interests in the Grantee's Recovery Act Capital Program or FRA's administration or enforcement of applicable Federal laws or regulations. Before the Grantee may name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA; this proviso applies to any type of litigation whatsoever, in any forum.

d. No FRA Obligations to Third Parties. Absent FRA's express written consent, and notwithstanding any concurrence by FRA in or approval of the award of any contract of the Grantee (third party contract) or subcontract of the Grantee (third party subcontract) or the solicitation thereof, FRA shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person not a party to this Agreement in connection with the Grantee's performance under this Agreement.

#### Section 203. Ethics.

The Grantee agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal funds. The code or standards shall provide that the Grantee's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors or anything of monetary value from present or potential contractors or subgrantees. The Grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. As permitted by State or local law or regulations, such code or standards shall provide for penalties, sanctions, or other disciplinary actions for violations by the Grantee's officers, employees, or agents, or by contractors or subgrantees or their agents.

(1) Personal Conflict of Interest. The Grantee's code or standards must provide that no employee, officer, board member, or agent of the Grantee may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- (a) The employee, officer, board member, or agent;
- (b) Any member of his or her immediate family;
- (c) His or her partner; or
- (d) An organization that employs, or is about to employ, any of the above.

(2) Organizational Conflicts of Interest. The Grantee's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

#### Section 204. Approved Program Budget; Approved Project Scopes.

a. The Grantee agrees to carry out its Recovery Act Capital Program in accordance with the Approved Program Budget, as specifically set forth in Attachment IV-a and the Approved Project Scopes, as specifically set forth in Attachment IV-b, and no funds provided through this Agreement may be used by the Grantee for capital expenditures in a manner that is not consistent with the Approved Program Budget and the Approved Project Scopes, except as permitted in subsection b. below.

b. The Grantee agrees to obtain the written approval of FRA's Associate Administrator for Railroad Development for any revisions to the Approved Program Budget and/or Approved Project Scopes:

1. that involve any increases of 1) twenty-five percent (25%) and are greater than \$500,000, or 2) two million dollars (\$2,000,000), whichever is less, in forecasted spending on any individual line item in the Approved Program Budget, or

2. any revisions to the Approved Program Budget that are associated with an actual overrun of any amount of the total program budget for any individual line item in the Approved Program Budget, or

3. any revisions to the Approved Program Budget or Approved Project Scopes that involve the addition of a new program or project, the deletion of any listed program or project, or a change in scope that is projected to be accomplished for any listed project.

c. In the event the FRA has not responded to a request for approval submitted in accordance with the provisions of this subsection with respect to a proposed revision addressed in subsections b.1 or b.2 through approval, rejection, or request for additional information within twenty-one (21) days of receipt, the request shall be deemed approved and the Approved Project Scopes shall be revised consistent with the Grantee's request.

d. Requests for approval of a budget reprogramming should include the following information: a hard-copy letter identifying the total amount to be

reprogrammed and a justification for the reprogramming in general terms; a hard-copy and electronic-copy summary table identifying source projects, the amount by which the source project budgets are to be reduced, and a report with monthly project and program level budgets altered to reflect changes requested to both source and use projects and programs; and hard copies of any further justification for the reprogramming that the Grantee believes necessary or appropriate. Reprogramming requests should be submitted separately for the Recovery Act Capital Program and the regular fiscal year capital investment programs.

e. The Grantee agrees to notify the Associate Administrator for Railroad Development as soon as it becomes aware that it is likely that any revisions of the type outlined above will become necessary. This notification may be provided through the monthly reports described in section 111 or through a special report, as appropriate. In requesting a revision to the Approved Program Budget or the Approved Project Scopes, the Grantee shall provide a detailed justification for the revision, identify the implications for its Recovery Act Capital Program, and identify a funding source for the proposed change.

f. Funds may not be reprogrammed between security and non-security projects nor may funds be reprogrammed in such a way as to allocate more than sixty percent of the non-security funds to projects along the Northeast Corridor.

#### Section 205. Accounting Records.

a. **Accounts.** The Grantee agrees to establish and maintain an accounting system for its Recovery Act Capital Program in a manner consistent with 49 C.F.R. §19.21, as amended; provided that Grantee's accounting system shall not be required to comply with 49 C.F.R. §19.21(b)(2) because the Grantee does not have an encumbrance accounting system that allows reporting on obligated and unobligated balances and 49 C.F.R. §19.21(b)(5) because Congress specifically authorized the Grantee to receive funds on a quarterly basis in the FY 2009 Continuing Resolution and the FY 2008 DOT Appropriations Act and because the FRA has determined that Congress intended FRA to follow the same funding process under the Recovery Act. The Grantee shall track and account for the funding provided through this Agreement as a separate capital funding source in the Grantee's accounting system.

b. **Funds Received or Made Available for the Recovery Act Capital Program.** Consistent with the provisions of 49 C.F.R. § 19.21, as amended, the Grantee agrees to record and deposit in a financial institution all payments received by it from FRA pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of its Recovery Act Capital Program. The Grantee is encouraged to use financial institutions owned at least 50 percent by minority group members.

c. **Documentation of Costs and Program Income.** All costs charged to its Recovery Act Capital Program, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Grantee also agrees to maintain accurate records of all Program Income derived from its Recovery Act Capital Program.

d. **Checks, Orders, and Vouchers.** The Grantee agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to its Recovery Act Capital Program shall be clearly identified, readily accessible, and, to the extent feasible, kept separate from documents not pertaining to that program.

e. **Advance Payment.** The FRA and the Grantee are agreed that the

Grantee's ability to be paid in advance is not dependent on the Grantee's having a financial management system that meets the requirements of 49 C.F.R. §19.22(b)(1)(ii).

f. **Program Budget Revisions.** Revisions to the Approved Program Budget will be carried out in accordance with section 204 of this Agreement and not in accordance with the provisions of 49 C.F.R. §19.25(h) or (m).

#### Section 206. Record Retention.

a. **Submission of Contracts and Other Documents.** During the course of its activities under this Agreement and for three years thereafter, the Grantee agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to its performance under this Agreement as FRA may require. Reporting and record-keeping requirements are set forth in 49 C.F.R. Part 19 for private non-profit and for-profit Grantees. Closeout does not alter these requirements.

#### b. Audit and Inspection.

(1) **General Audit Requirements.** The Grantee agrees to comply with the audit requirements of OMB Circular A-133. The Grantee agrees to obtain any other audits as may be reasonably required by FRA and to allow the Secretary of Transportation, the FRA and their authorized representatives to conduct such audits as they deem appropriate with respect to the financial assistance provided to the Grantee under this Agreement. Closeout will not alter the Grantee's audit responsibilities. Audit costs for program administration and management are allowable under this Agreement to the extent authorized by OMB Circular A-87, Revised; OMB Circular A-21, Revised; or OMB Circular A-122, Revised.

(2) **Inspection by Federal Officials.** The Grantee agrees to permit the Secretary, the Department of Transportation Inspector General, the Amtrak Inspector General, the Recovery Accountability and Transparency Board, the Recovery Independent Advisory Panel, and the Comptroller General of the United States, or their authorized representatives, to inspect all work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its contractors pertaining to the Grantee's activities under this Agreement. The Grantee will take appropriate steps to ensure that the referenced materials of its contractors are available for inspection in order to ensure compliance with this section.

#### Section 207. Payments.

a. **Request by the Grantee for Payment.** The Grantee's request for funding under this Agreement shall be made to the FRA Administrator, and will be acted upon by FRA as set forth in this section. Each payment made to the Grantee must comply with Department of the Treasury regulations, "Rules and Procedures for Funds Transfers," 31 C.F.R. Part 205. To receive funds under this Agreement, the Grantee must:

(1) Have demonstrated or certified that it has available or will have available during the term of this Agreement sufficient non-Federal funds, adequate when combined with Federal payments, to cover all costs to be incurred for its Recovery Act Capital Program;

(2) Have submitted to FRA all financial and progress reports required under this Agreement; and

(3) Have identified the source(s) of financial assistance from which the payment is to be derived in terms of funds appropriated for FY 2009 or FY 2010

operations, funds appropriated for FY 2009 or FY 2010 capital expenses, and funds appropriated for the Recovery Act Capital Program.

**b. Payment by FRA.**

(1) Advance Payment by FRA. The procedures for advance payment are delineated in Attachment II to this Agreement, entitled "Recipient Organization Procedures for Requesting Advance Payment." In addition to procedural requirements, the following apply:

(a) The Grantee may initiate cash drawdowns as provided for in section 109 of this Agreement and in the Approved Program Budget.

(b) The Grantee agrees to report its cash disbursements and balances in a timely manner as required by sections 112 and 113 of this Agreement.

(c) The Grantee agrees to provide for control and accountability for all funds as specified in this Agreement.

(d) The Grantee may not draw down funds for its Recovery Act Capital Program in an amount that would exceed the sum obligated by FRA or the current available balance under this Agreement.

(2) Other Payment Information. If the Grantee fails to adhere to the foregoing "Payment by FRA" requirements of this Agreement, FRA may revoke the portion of the Grantee's funds that has not been expended.

**c. Allowable Costs.** The Grantee's expenditures will be reimbursed only if they meet all requirements set forth below:

(1) Conform to the requirements of the Approved Program Budget, Approved Project Scopes, and all other terms of this Agreement;

(2) Be necessary in order to carry out the Recovery Act Capital Program;

(3) Be reasonable for the goods or services purchased;

(4) Be actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);

(5) Be for cash disbursements associated with the Recovery Act Capital Program made on or after February 17, 2009, unless specific authorization from FRA to the contrary is received in writing;

(6) Unless permitted otherwise by Federal statute or regulation, conform with Federal guidelines or regulations and Federal cost principles as set forth for Grantees that are for-profit organizations, in the standards of the Federal Acquisition Regulation, 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations."

(7) Be satisfactorily documented; and

(8) Be treated uniformly and consistently under accounting principles and procedures approved and prescribed by FRA for the Grantee, and those approved or prescribed by the Grantee for its subgrantees and contractors.

**d. Disallowed Costs.** In determining the amount of Federal assistance FRA

will provide, FRA will exclude:

(1) Any cash disbursements made by the Grantee before February 17, 2009, unless otherwise permitted by Federal law or regulation, or unless an authorized representative of FRA states in writing to the contrary; and

(2) Subject to the adjustments by the Grantee permitted under section 204(b), any costs incurred by the Grantee that are not included in the latest Approved Program Budget and Approved Project Scopes.

The Grantee agrees that reimbursement of any cost under the "Payment by FRA," section of this Agreement does not constitute a final FRA decision about the allowability of that cost as set forth in subsection c., above, and does not constitute a waiver of any violation by the Grantee of the terms of this Agreement. The Grantee understands that FRA will not make a final determination about the allowability of any cost as described in subsection c., above, until any FRA requested or FRA initiated audit has been completed. If FRA determines that the Grantee is not entitled to receive any part of the Federal funds requested, FRA will notify the Grantee stating the reasons therefor. Closeout will not alter the Grantee's obligation to return any funds due to FRA as a result of later refunds, corrections, or other transactions. Nor will closeout alter FRA's right to disallow costs as described in this subsection d., and recover funds on the basis of a later audit or other review. Unless prohibited by law, FRA may offset any Federal assistance funds to be made available under this Agreement as needed to satisfy any outstanding monetary claims that the Federal Government may have against the Grantee.

e. **Bond Interest and Other Financing Costs.** Bond interest and other financing costs are allowable.

f. **Requirement to Remit Interest.** The Grantee agrees that:

(1) Any interest earned by the Grantee on FRA funds shall be dedicated to furthering the purposes of this Agreement and shall be reported to the FRA in accordance with section 111.

(2) Irrespective of whether the Grantee has deposited funds in an interest-bearing account, the Grantee agrees to pay to FRA interest on any FRA funds that the Grantee has drawn down and failed to spend for allowable costs. Unless waived by FRA, interest will be calculated at rates imposed by the U.S. Secretary of the Treasury beginning on the fourth day after the funds were deposited in the Grantee's bank or other financial depository. This requirement does not apply to any Grantee that is a state, state instrumentality, or Indian Tribal Government, except as permitted by regulations that may be issued by the U.S. Secretary of the Treasury.

(3) Upon notice by FRA to the Grantee of specific amounts due, the Grantee agrees to promptly remit to FRA any excess payment of amounts or disallowed costs, including any interest due thereon.

#### Section 208. **Property, Equipment, and Supplies.**

Unless otherwise approved by FRA, the following conditions apply to property, equipment, and supplies financed under this Agreement:

a. **Use of Property.** The Grantee agrees that property, equipment, and supplies acquired with financial assistance provided by the FRA through this Agreement shall be used for the provision of intercity rail passenger service (or related purposes) for the duration of the useful life of the property, equipment and supplies, as determined by the Grantee, in consultation with the FRA. Should



the Grantee unreasonably delay or fail to use such property, equipment, or supplies during its useful life, the Grantee agrees that FRA may require the Grantee to return the entire amount of FRA assistance expended on that property, equipment, or supplies.

**b. General Federal Requirements.**

(1) A Grantee that is not a governmental entity agrees to comply with the property standards of 49 C.F.R. §§ 19.30 through 19.37 inclusive, including any amendments thereto, and other applicable guidelines or regulations that are issued, except with respect to requirements that are specifically addressed in this Agreement.

(2) Additional exceptions to the requirements of 49 C.F.R. §§ 19.30 through 19.37 inclusive, must be specifically approved by FRA.

**c. Maintenance.** The Grantee agrees to maintain property and equipment procured with funds provided under this Agreement in good operating order, and in accordance with its standard maintenance practices.

**d. Records.** The Grantee agrees to keep satisfactory records with regard to the use of the property, equipment, and supplies, and submit to FRA, upon request, such information as may be required to assure compliance with this section of this Agreement.

**e. Withdrawn Property.** If any property, equipment, or supplies purchased or improved with financial assistance provided under this Agreement are not used for the provision of intercity rail passenger services (or related purposes) for the duration of the useful life of the property, equipment or supplies, as determined by the Grantee, in consultation with FRA, whether by planned withdrawal, misuse or casualty loss, the Grantee agrees to notify FRA immediately. Disposition of withdrawn property, equipment, or supplies shall be in accordance with 49 C.F.R. §§ 19.30 through 19.37 inclusive, for a Grantee that is an institution of higher education or a private organization.

**f. Encumbrance of Property.** Unless expressly authorized in writing by FRA, the Grantee agrees to refrain from:

(1) Executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation, not in the ordinary course of business, that in any way would affect FRA interest in any property or equipment acquired with financial assistance provided under this Agreement; or

(2) Securing for the benefit of any third party property or equipment procured with funds under this Agreement.

The Grantee agrees to refrain from taking any action or acting in a manner that would adversely affect FRA's interest or impair the Grantee's continuing control over the use of property or equipment procured with funds under this Agreement.

**Section 209. Relocation and Land Acquisition.**

The Grantee agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

**Section 210. Flood Hazards.**

The Grantee agrees to comply with the applicable flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any construction or acquisition project.

#### Section 211. Procurement.

a. **Federal Standards.** Recipients of Federal financial assistance are required to follow the applicable procurement provisions found at 49 C.F.R. §§19.40-19.48 ("Federal Requirements") that set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The Grantee has implemented procurement policies and procedures to ensure that all acquisitions undertaken with Recovery Act funds shall be carried out in accordance with the Federal Requirements. In lieu of complying with 49 C.F.R. §19.44(b) relating to small businesses, minority-owned firms, and women's business enterprises, the Grantee shall comply with subsection f. of this section. If determined necessary for proper administration, FRA reserves the right to review the Grantee's technical specifications and requirements.

b. **Buy-American.** Consistent with section 1605 of the Recovery Act, none of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Waiver provisions are included in section 1605(b) and (c) of the Recovery Act. Section 1605(d) provides that the Buy American requirements are to be applied in a manner consistent with United States obligations under international agreements. The Office of Management and Budget (OMB) has issued guidance defining public building as any enclosed indoor place or portion of a place owned, leased or rented by any state, county or municipal government, or by any agency supported by appropriation of, or by contracts or grants from funds derived from the collection of federal, state or county taxes. OMB has also defined public work to mean all work, construction, alteration, repair or improvement that is executed at the cost of the state or any local public agency. Certain of the projects to be funded under this Agreement could involve a public building (e.g., a train station owned by a state or local government) but the Grantee's activities generally would not qualify as public work and thus would not be subject to the Recovery Act Buy American requirements. Buy-American requirements are also applicable to the Grantee's purchases of articles, material and supplies costing at least \$1,000,000 in accordance with 49 U.S.C. §24305(f). The FRA will work with the Grantee to reconcile application of the two separate Buy American requirements with respect to the expenditure by the Grantee of Recovery Act funds on any public building or public work.

c. **Cargo Preference -- Use of United States-Flag Vessels.** Pursuant to U.S. DOT, Maritime Administration regulations, "Cargo Preference -- U.S.-Flag Vessels," 46 C.F.R. Part 381, the Grantee shall insert the following clauses in contracts let by the Grantee in which equipment, materials or commodities may be transported by ocean vessel in carrying out the activities funded under this Agreement:

AS REQUIRED BY 46 C.F.R. PART 381, THE CONTRACTOR AGREES --

(1) TO UTILIZE PRIVATELY OWNED UNITED STATES-FLAG COMMERCIAL VESSELS TO SHIP AT LEAST 50 PERCENT OF THE GROSS TONNAGE (COMPUTED SEPARATELY FOR DRY BULK CARRIERS, DRY CARGO LINERS, AND TANKERS) INVOLVED, WHENEVER SHIPPING ANY EQUIPMENT, MATERIALS, OR COMMODITIES PURSUANT TO THIS CONTRACT TO THE EXTENT SUCH VESSELS ARE AVAILABLE AT FAIR AND REASONABLE RATES FOR UNITED

STATES-FLAG COMMERCIAL VESSELS.

(2) TO FURNISH WITHIN 20 DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENTS ORIGINATING WITHIN THE UNITED STATES, OR WITHIN 30 WORKING DAYS FOLLOWING THE DATE OF LOADING FOR SHIPMENT ORIGINATING OUTSIDE THE UNITED STATES, A LEGIBLE COPY OF A RATED, "ON-BOARD" COMMERCIAL OCEAN BILL-OF-LADING IN ENGLISH FOR EACH SHIPMENT OF CARGO DESCRIBED IN PARAGRAPH (1) ABOVE TO THE RECIPIENT (THROUGH THE PRIME CONTRACTOR IN THE CASE OF SUBCONTRACTOR BILLS-OF-LADING) AND TO THE DIVISION OF NATIONAL CARGO, OFFICE OF MARKET DEVELOPMENT, MARITIME ADMINISTRATION, 400 SEVENTH STREET, S.W., WASHINGTON, D.C. 20590, MARKED WITH APPROPRIATE IDENTIFICATION.

(3) TO INSERT THE SUBSTANCE OF THE PROVISIONS OF THIS CLAUSE IN ALL SUBCONTRACTS ISSUED PURSUANT TO THIS CONTRACT.

d. **Debarment and Suspension; and Drug-Free Work Place.** The Grantee agrees to obtain certifications on debarment and suspension from its third party contractors and subgrantees and otherwise comply with U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 29 for procurements that are expected to equal or exceed the small purchase (simplified acquisition) threshold of \$100,000 as provided for in 49 C.F.R. §29.110(a) (1) (ii) (B).

e. **Notification of Third Party Contract Disputes or Breaches.** The Grantee agrees to notify FRA of any current or prospective major dispute, breach, or litigation pertaining to any third party contract related to its Recovery Act Capital Program. If the Grantee seeks to name FRA as a party to litigation for any reason, the Grantee agrees first to inform FRA before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

f. **Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.** FRA encourages the Grantee to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined for other DOT agencies in 49 C.F.R. Part 26) in carrying out activities funded under this Agreement and the Grantee shall ensure that it provides maximum practicable opportunities for small businesses to compete for contracts resulting from this Agreement.

g. **Wage Rate Requirements.** All laborers and mechanics employed by contractors and subcontractors on projects funded under this Agreement shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. As provided for in 49 U.S.C. §24312(b), wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. §151 et seq.) are deemed to comply with sections 3141-3144, 3146, and 3147 of title 40.

h. **Competition.** Consistent with Recovery Act requirements, to the maximum extent practicable the Grantee shall ensure that contracts which are funded under this Agreement are awarded as fixed priced contracts through the use of competitive procedures. The Grantee shall provide the FRA with a summary of any contract awarded with funds provided through this Agreement that is not fixed-price and/or not awarded using competitive procedures (including an explanation as to why the contract was not fixed-price and/or not awarded using competitive procedures) for posting in a special section of the website established by the Recovery Accountability and Transparency Board.

#### Section 212. Metric System.

The Grantee agrees to use the metric system of measurement in its activities under this Agreement to the extent practicable, in conformance with applicable regulations, guidelines, and policies that U.S. DOT or FRA may issue. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impracticable or likely to cause significant inefficiencies or loss of markets to U.S. firms.

#### Section 213. Patent Rights.

a. If any invention, improvement, or discovery of the Grantee or any of its third party contractors is conceived or first actually reduced to practice employing financial assistance provided to the Grantee by the FRA under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Grantee agrees to notify FRA immediately and provide a detailed report. The rights and responsibilities of the Grantee, third party contractors and FRA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

b. The Grantee agrees to include the requirements of the "Patent Rights" section of this Agreement in third party contracts for planning, research, development, or demonstration financed with financial assistance provided under this Agreement.

#### Section 214. Site Visits.

FRA, through its authorized representatives (and those individuals or entities identified in section 206.b.2), has the right, at all reasonable times, to make site visits to review the Grantee's activities and accomplishments in carrying out its Recovery Act Capital Program. If any site visit is made by FRA on the premises of the Grantee, subgrantee or subcontractor under this Agreement, the Grantee shall provide and shall require its subgrantees or subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will comply with the Grantee's safety requirements and not unduly delay work being conducted by the Grantee, subgrantee or subcontractor.

#### Section 215. Safety Oversight.

To the extent applicable, the Grantee agrees to comply with any Federal regulations, laws, or policy and other guidance that FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

#### Section 216. Americans With Disabilities Act.

The Grantee agrees to utilize funds provided under this Agreement in a manner consistent with the requirements of the Americans With Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973, as amended ((29 U.S.C. 794 et seq.) and implementing DOT regulations at 49 C.F.R. parts 27, 37, and 38.

Section 217. Environmental Protection.

a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

b. The Grantee will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. The Grantee certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). The Grantee will notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Grantee's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. The Grantee will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds One Hundred Thousand Dollars (\$100,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform the Grantee upon the receipt of a communication from the EPA concerning the matters set forth herein.

c. The Grantee may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332) (NEPA), the National Historic Preservation Act (16 U.S.C. 470(f)) (NHPA), and related laws and regulations have been completed and the FRA has provided the Grantee with a written notice authorizing the Grantee to proceed.

d. The Grantee shall assist the FRA in its compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (64 Fed. Reg. 28545, May 26, 1999), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, the Grantee may be required to conduct certain environmental analyses and to prepare and submit to the FRA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and findings of no significant impact).

e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by the Grantee without the prior written concurrence of FRA. The Grantee shall assist the FRA in complying with the requirements of 49 U.S.C. §303(c).

Section 218. Completion, Settlement, and Closeout.

a. Completion. Within 90 days of the completion date or termination by FRA, the Grantee agrees to submit a final Financial Status Report (Standard Form

269), a certification or summary of its expenses, and third party audit reports, as applicable.

b. **Remittance of Excess Payments.** If FRA has made payments to the Grantee in excess of the total amount of FRA funding due, the Grantee agrees to promptly remit that excess and interest as may be required by the "Payment by FRA" section of this Agreement.

c. **Closeout.** Closeout occurs when all required activities in connection with the Recovery Act Capital Program and all administrative procedures described in 49 C.F.R. Part 19 have been completed, and when FRA notifies the Grantee and forwards the final Federal assistance payment, or when FRA acknowledges the Grantee's remittance of the proper refund. Closeout shall not invalidate any continuing obligations imposed on the Grantee by this Agreement or by the FRA's final notification or acknowledgment.

#### Section 219. Right of FRA to Terminate.

a. Upon written notice, the Grantee agrees that FRA may suspend or terminate all or part of the financial assistance provided herein if the Grantee has violated the terms of this Agreement. Any failure to make reasonable progress in carrying out the responsibilities the Grantee has agreed to assume under this Agreement or other violation of this Agreement that significantly endangers substantial performance of the Grantee's obligations shall provide sufficient grounds for FRA to terminate this Agreement. In the event of an alleged failure to comply, the FRA shall notify the Grantee in writing of its belief that the Grantee is failing to perform or comply with this Agreement and of the measures considered necessary to correct the nonperformance or noncompliance. Within twenty-one (21) days of receipt of such notice, the Grantee shall (1) proceed promptly to correct the noncompliance and acknowledge the same to the FRA or (2) establish to the FRA's satisfaction that there has been no noncompliance or nonperformance or in the alternative, that there is a valid reason therefor.

b. In general, termination of any financial assistance under this Agreement will not invalidate obligations properly incurred by the Grantee and concurred in by FRA before the termination date, to the extent those obligations cannot be canceled. However, if FRA determines that the Grantee has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable use of the property, facilities, or equipment acquired with financial assistance provided under this Agreement, or failing to adhere to the terms of this Agreement, FRA reserves the right to require the Grantee to refund the entire amount of FRA funds provided under this Agreement or any lesser amount as may be determined by FRA.

c. Expiration of any time period established under this Agreement does not, by itself, constitute an expiration or termination of this Agreement.

#### Section 220. Entire Agreement.

This Agreement constitutes the entire agreement between the parties. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

#### Section 221. Grant Modifications.

Modifications to this Agreement may be made only in writing, signed by each party's authorized representative, and specifically referred to as a modification to this Agreement.

#### Section 222. Flow Down Provisions.

a. As required by this Agreement and/or 49 C.F.R. Part 19, the Grantee shall include provisions to carry out the purposes of this Agreement in all contracts or grant agreements with persons who perform any part of the work under this Agreement. There shall be provisions for a further flow down of such requirements to each sub-tier contractor or grantee as required. The requirements of this Section shall not apply to the acquisition of goods or services using the GSA Schedule (as authorized by Section 218 of the Passenger Rail Investment and Improvement Act of 2008) or to contracts or agreements entered into by the Grantee with any state or local governmental entity, including any regional transportation or transit agency because the procurement and acquisition policies and procedures of these entities are presumed to be consistent with the Federal requirements because they receive Federal financial assistance through other Federal programs, including funds provided by other Department of Transportation operating administrations or with any private railroad company because these entities typically own the right-of way being improved with Federal financial assistance and have in place existing procedures for carrying out such improvements to their property.

b. The Grantee has indicated that it has occasionally encountered difficulties with certain essential vendors in securing a vendor's agreement to accept some or all of the flow down requirements required in subsection a. of this section. Given the nature of the Grantee's operations and its substantial reliance on federal operating and capital assistance to support its approximately \$2 billion operation, the FRA recognizes that there may be certain limited situations where it is necessary to acquire a good or service from a vendor that is unwilling or unable to comply with one or more of the flow down provisions. Accordingly, the Grantee may seek a written waiver from the FRA with respect to the application of a particular flow down provision or provisions to a specific procurement of goods or services. The waiver application shall be submitted by Amtrak's Chief Logistics Officer to the FRA, Office of Railroad Development and shall demonstrate that: (1) the procurement represents an important component of the Grantee's ongoing operations or its capital program and that securing the item or items from another vendor would be unreasonable in terms of cost, delay, impossibility, or other relevant factor; (2) the Grantee has made a good faith effort, with respect to the flow down requirements, to secure the consent of the vendor; (3) the waiver request is narrowly tailored to meet the specific objections of the vendor; and (4) the Grantee has adequate sources of non-federal funding to cover the expenditure, and is receiving a fair and reasonable price, for the goods or services being procured for which the waiver is sought. The Grantee shall submit the waiver application at least twenty-one (21) days before it proposes to enter into the contract with a vendor and the FRA shall approve or deny the Grantee's application within fourteen (14) days after receipt of a complete request. In the event that the FRA has not approved or rejected an application filed in accordance with this section within fourteen (14) days of receipt, the application shall be deemed approved and the Grantee may proceed with the contract in accordance with the waiver request.

#### Section 223. Successors and Assignees.

This Agreement may not be assigned without the express prior written consent of the other party.

#### Section 224. Execution.

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

#### Section 225. Severability.

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the first page hereof as of the last date written thereon.